CF0000065615

(2)

CRA 805/05

APPEAL OF PRISONER

07 OCT 2005
Received on 261
Assistant Registrar
High Court, Bilaspur

No. 116/05 Name शिवनाथ

Father's name धरम साय गोंड

Residence साः- रघुपुर थाना- धौरपुर Age 35 वर्ष

Sentenced सत्र प्र0 क्र0- 243/05 धारा- 302 भा0दं0वि0 On 31.8.2005

Under section आजीवन कारावास by मा0- III अपर सत्र न्यायाधीश अम्बिकापुर (C.G.) अम्बिकापुर

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 31.8.2005
2. Date of which copy received 17.9.2005
3. Date on which appeal sent 22.9.2005
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 116/05 Name शिवनाथ s/o धरम साय गोंड

Continued in केन्द्रीय Jail अम्बिकापुर

No. 5401 Dated 22/9/05 199

Forward to the CHIEF JUDICIAL MAGISTRATE अम्बिकापुर सरगुजा (छ0ग0) to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न- निर्णय प्रति लिपि- 5 (पांच) पन्ने।

Superintendent

Superintendent
Central Jail, Ambikapur

Date of receipt in C.J.M's Office 23/9/05

Date of receipt record to accompany 30/9/05

Memo of Appeal of the Appeliate Court मान्यवर उच्च न्यायालय छत्तीसगढ़ बिलासपुर

No. 0 Dated 30/9/05 199

Forwarded to the मान्यवर उच्च न्यायालय छत्तीसगढ़ बिलासपुर

अपीलार्थी ① सत्रप्र0 243/05 अम्बि0 / बिलासपुर Bile A 283
अपीलार्थी 31/8/05 एवं ② Cr. case No. 255/05 Bile A 283

C.J. Magistrate

Date of receipt in Appeliate Court

(14)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. 805/05 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

17-11-2006

Mrs. Kiran Jain, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Mrs. Kiran Jain submits that the Court has appointed Mr. Sachin Singh Rajput, Advocate, as Amicus Curiae for the accused/ appellant, but now, the appellant has engaged her, therefore, she may be allowed to argue the matter. Mr. Sachin Singh Rajput has no objection.

Mrs. Kiran Jain is permitted to appear and argue the appeal on behalf of the accused/appellant.

Mr. Sachin Singh Rajput is discharged and his name be deleted from the cause list.

Mrs. Kiran Jain, learned counsel for the appellant, submits that the appeal may be heard finally.

As the accused is in detention since 17-3-2005, on the agreement of counsel for the parties, the matter is heard finally.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 31st August, 2005, passed by the 3rd Additional Sessions Judge (F.T.C.), Ambikapur, in Sessions Trial No.243/2005, whereby learned Additional Sessions Judge after holding the

P.T.O.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year.

Case of the prosecution is that in the intervening night of 15th & 16th March, 2005, Lakhan (PW-3), brother of the accused/appellant heard the sound of quarrel between the accused/appellant and his wife Sitabai (since deceased). He went to the house of the accused and saw that the accused was assaulting his wife with a Lathi. The accused went to the house of Shivshankar (PW-1) and requested him to come to his house, Shivshankar went to the house of the accused and saw that there was injury on the head of Sitabai, she was lying on a cot. Thereafter, Shivshankar went to the Police Station and lodged the report Ex.P-1.

After registering the case, the Station House Officer took up the investigation, left for the scene of occurrence. After giving notice Ex.P-11 to the Panchas, he prepared the inquest report Ex.P-12 of the body of Sitabai. The body of Sitabai was sent to Primary Health Centre, Dhourpur under Ex.P-13, where Dr. K.P. Vishwakarma (PW-11) conducted post-mortem and prepared post-mortem report Ex.P-17 in which he opined that the death of Sitabai is due to cardio respiratory failure caused by head injury and the nature of death is homicidal.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned Additional Sessions Judge received the case on transfer for trial.

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish charge against the accused examined eleven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence.

Learned Additional Sessions Judge after hearing the arguments of respective counsel and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard Mrs. Kiran Jain, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

Mrs. Kiran Jain has not disputed the homicidal death of Sitabai. Apart from that, from the medical evidence of Dr. K.P. Vishwakarma (PW-11) and ocular evidence of Murari (PW-4) who saw the accused attacking the deceased with a Lathi, it is established that the death of Sitabai was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, same has also not been disputed by learned counsel for the appellant. Lakhan (PW-3) is brother of the accused, but he has turned hostile and he has not supported the prosecution case. Murari (PW-4) has stated in his evidence that on the fateful day in the night, he went to the house of appellant Shivnath where he saw that the accused assaulted his wife with Lathi as a result of which she succumbed to the injuries caused by the Lathi. Shivnath and his wife were quarreling and the accused was assaulting his wife. Therefore, he returned at about 8 p.m. in the night. His evidence has been corroborated by Shivshankar (PW-1),

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

who has stated in his evidence that the accused came to his house after the death of his wife at 8-9 a.m., informed him about the death of his wife and took him to his residence, where he saw Sitabai lying in injured condition on a cot, thereafter, he reported the matter to the police. The above ocular evidence stands corroborated by the medical evidence. As per Dr. K.P. Vishwakarma (PW-11) there was a contusion on the left thigh, another contusion on the head scapular region in the size of 7 cms. x 2 cms. and on opening of the head, the bone beneath the injury was found fractured. In his opinion, the cause of death was cardio respiratory failure due to the head injury. Therefore, involvement of the accused in commission of the crime in question is established.

Mrs. Jain, learned counsel for the appellant, argued that the prosecution has not been able to establish that the accused assaulted the deceased with intention to cause her death, therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Gwalre, learned Deputy Govt. Advocate supported the judgment of the trial Court.

In order to appreciate the arguments of respective counsel, we have perused the evidence of Murari (PW-4) who has stated in his evidence that he saw that the accused & the deceased were quarrelling and the accused assaulted the deceased with a Lathi. Therefore, from the above evidence it is established that there was some quarrel between the two and in that process the accused attacked the deceased with a Lathi, as a result of which she received fatal injury on the head. From the above evidence, it cannot be inferred that the accused assaulted the deceased with intention to cause her death. However, it can safely be inferred that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the manner in which the accused assaulted the deceased with Lathi on her head, he had the knowledge that by assaulting with Lathi on the head, he may likely to cause her death. Therefore, knowledge can be attributed to the accused, as such, the finding of the trial Court regarding conviction and sentence under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside and he is acquitted of the said charge. Instead thereof, the accused is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is in detention since 17-3-2005 till date. He will be entitled for set off for the above detention period against the sentence imposed.

Consequently, M.(Cri.)P.No.1894/2006 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Suma

P.T.O.